THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.8326 of 2007

Date: 13-08-2007.

Between :

M/s.Neuland Laboratories Limited, Ameerpet,
rep. by Sri Chandrasekhar.

.....Petitioner

And

The Assistant Secretary, Regional Transport Authority,
Hyderabad East Zone, Hyderabad.

.....Respondent.

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ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned Counsel for the parties. Counter has been filed.

Petitioner is aggrieved of a demand notice dated 22.02.2007, by which, he has been asked to pay tax with respect to the Quarters ending 30.09.2006, 31.12.2006 and 31.03.2007. The tax demanded is Rs.19,060/- per Quarter. A penalty of Rs.9,530/- for the first two Quarters and Rs.4,765/- for the 3rd Quarter, is imposed. The case of the petitioner is that he had stopped running the vehicle and had informed the authorities concerned in writing, in advance, that the vehicle would be stopped running from 30th June 2006 for the purposes of repairs. This intimation was given under a Certificate of Posting, which is denied by the respondent in the counter-affidavit. The

learned Government Pleader for Transport submits that no such intimation was ever received by the Department.

We will not be able to decide in this writ petition, whether any notice in writing, in terms of Rule 12-A of The A.P.Motor Vehicles Taxation Rules, 1963, was given or not. Therefore, we will have to presume that no such intimation was given, as it cannot be even proved, as the Post Offices do not maintain any record with respect to the Certificate of Postings, unlike in case of Registered Posts. Therefore, this writ petition raises mainly a question of fact whether an intimation was given or not, which cannot be decided in these proceedings, and the writ petition, on this ground, is liable to be dismissed.

The petitioner is also aggrieved of the action of the respondent in imposing the tax and penalty by a composite order, without assigning any reason as to why the penalty was imposed. Without ascertaining the liability of payment of tax, the respondents could have not imposed the penalty and it is settled by a Full Bench Judgment of this Court in **Y. Peda Venkaiah v. The Regional Transport Officer, Nellore**[1] that a composite order of penalty and tax cannot be passed. After the authorities come to the conclusion that the tax is due, they can demand tax and thereafter, proceedings for penalty can be imposed.

Therefore, we allow the writ petition to the extent of imposition of penalty and dismiss the writ petition with respect to demand of tax. However, the respondents shall be at liberty to initiate proceedings for imposition of penalty, if they are so advised.

Writ petition shall stand disposed of accordingly.

BILAL NAZKI, J

13th August 2007.

NOOTY RAMAMOHANA RAO, J

ajr

[1] AIR 1977 AP 227